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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
MOBILEMEDIA CORPORATION, et al.) WT Docket No. 97-115
)
Applicant for Authorizations and Licensee of)
Certain Stations in Various Services)

To: The Commission

**COMMENTS OF JOHN M. KEALEY ON THE REQUEST OF
MOBILEMEDIA CORPORATION FOR EXTENSION OF STAY**

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John M. Kealey (" Mr. Kealey"), by his attorneys, hereby submits comments on the request of MobileMedia Corporation and its subsidiaries ("MobileMedia" or the "Company") for a six-month extension of the stay the Federal Communications Commission ("FCC" or "Commission") imposed in this matter on June 6, 1997¹ ("Request").

Although Mr. Kealey has not been named as a party in this proceeding, his reputation and employability in the telecommunications industry have been adversely effected by an order the Commission released on August 8, 1997, FCC 97-284 ("August 8 Order"), which endeavored to clarify and modify certain aspects of the Stay Order. Instead, the August 8 Order unfairly targeted Mr. Kealey as a "potential wrongdoer." It further provided that, to resolve his qualifications to be an FCC licensee, Mr. Kealey had to wait eight months during the pendency of the stay to see whether Second Thursday relief to the Company is denied and a resulting administrative qualifications hearing held. Almost seven months ago, Mr. Kealey filed a Petition for Reconsideration and Modification or Clarification of the August 8 Order ("Petition"). The

¹ Order, FCC 97-197 (released June 6, 1997) (hereinafter the "Stay Order").

Commission never ruled on the Petition. Mr. Kealey wrote to the General Counsel's office on February 24, 1998 to solicit its assistance in urging the Commission to act on his pending Petition. *The Commission has yet to rule on his Petition.* Now the Company seeks to extend the stay for an additional six months -- a request that, if granted, would only exacerbate the inequity of the August 8 Order and perpetuate for him what has already been an endless waiting game. For this reason alone, Mr. Kealey opposes the Company's request.

I. BACKGROUND

A. The Commission Designates A MobileMedia Qualifications Hearing.

On April 8, 1997, the Commission instituted this proceeding and designated an administrative hearing on the qualifications of the Company to hold paging licenses.² In the HDO, the Commission questioned whether "MobileMedia was entirely forthcoming" in its Report and concluded that:

despite the Bureau's investigation and certain admissions by MobileMedia, including that certain former members of MobileMedia's senior management were actively involved in the misbehavior, *it remains unclear which other officers, directors and senior managers knew about or condoned the wide-scale pattern of misbehavior.*

(HDO, ¶ 10) (emphasis added). The Commission therefore directed an administrative law judge to, on an expedited basis, take evidence and develop a full factual record on issues concerning the Company's improper filings. The hearing was scheduled to commence on June 10, 1997.

² See MobileMedia Corporation, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 97-124, released April 8, 1997 ("HDO").

B. The Commission Stays the Hearing.

On June 6, 1997, the Commission granted the Company's motion to stay the administrative hearing for a period of ten months to allow it to resolve a pending proceeding before the United States Bankruptcy Court in a manner consistent with Second Thursday Corporation, 22 F.C.C.2d 515 (1970). The Commission warned that the magnitude of the false filings at issue warranted heightened scrutiny to ensure compliance with the Second Thursday showing with respect to all "potential wrongdoers." (Stay Order, ¶ 17). The Commission defined "potential wrongdoers" as "all former and current officers, directors, and senior managers" of MobileMedia and directed the Bureau to prepare and disseminate a list "of all such persons." (Id. ¶¶ 17, 18). Although the qualifications of all of the listed individuals were placed in question, the Commission provided only one mechanism by which they could be resolved, if necessary, during the pendency of the stay: it directed all FCC bureaus processing applications in which a listed individual holds an "attributable interest" to make a recommendation to the Commission as to the basic qualifications of that individual, with the ultimate qualifications resolution to be made by the Commission itself. (Id. ¶ 18). However, the procedures by which the affected individuals were to proffer information relevant to his or her qualifications were left undefined, and no procedure was implemented for the resolution of the qualifications of those who did not hold any attributable interest.

C. A List of Potential Wrongdoers is Created, Amended, and Amended Again.

In response to the directive contained in Stay Order, the Bureau submitted a list of 91 "potential wrongdoers" on June 16, 1997. On June 25, 1997, the Bureau substituted a revised and corrected list naming only 43 individuals (the "Amended List"). Thereafter, six petitions for reconsideration or clarification of the June 6 Order were filed which challenged the list of potential wrongdoers as overbroad and urged the Commission to correct the failure in its June 6 Order to

implement a practical and timely procedure by which a determination could be made as to whether the listed individuals were in fact "wrongdoers."

In a subsequent order, the Commission conceded that the petitioners' views "essentially parallel[ed] [its] own in material respects." (August 8 Order, ¶ 5). However, the Commission did not correct the procedural deficiency of its Stay Order. Instead, the Commission retreated from its earlier position that the results of the Company's internal investigation and the Bureau's own investigation reflected uncertainty as to which "officers, directors and senior managers knew about or condoned the wide-scale pattern of misbehavior." The Commission reexamined only the "information before [it] at the time of designation," but failed to take any additional evidence or develop the full factual record it conceded was lacking when it designated the matter for administrative hearing. On this slim record, the Commission expressed certainty that "the allegations against MobileMedia [we]re sufficient to raise questions only as to the qualifications of four individuals" and removed the other 39 individuals from the Amended List (Id., ¶ 8).

Of those 39 people removed the Amended List, the Commission made findings only as to three, concluding that, despite "some degree of knowledge of the wrongdoing," their activities did not raise a "substantial and material question concerning their qualifications to be a licensee." (Id., ¶ 9). Although it was recognized that some of the other 36 individuals knew of the wrongdoing, all 36 were simply removed from the Amended List, seemingly in contradiction to the heightened scrutiny the Commission had demanded in the Stay Order. As for Mr. Kealey, despite acknowledgment of the existence of an "unresolved dispute" as to his knowledge and involvement, if any, in the wrongdoing, he remains on a publicly announced short list of "potential wrongdoers," which includes the two individuals who admitted wrongdoing and were fired for being "primarily responsible for carrying out the deception of the Commission." (Id., ¶ 8). Upon a record that cannot

fairly be considered a vehicle by which the Commission could or should make even preliminary judgments about Mr. Kealey, then, the August 8 Order expresses certainty that "substantial and material" questions exist concerning Mr. Kealey's FCC licensee qualifications. That finding has the perhaps unintended but actual effect of interfering with Mr. Kealey's reputation and depriving him of employment within his field -- the telecommunications industry.

While the August 8 Order effectively targeted Mr. Kealey, it neglected to provide him with a meaningful mechanism by which his qualifications could be resolved. Although Mr. Kealey had informed the Bureau on July 11, 1997 that he currently holds no FCC license or application nor has an attributable interest in any other licensee or applicant,³ the Commission simply reiterated in its August 8 Order that "no application in which [Kealey] has an attributable interest may be granted until the qualifications question has been resolved in that or the MobileMedia proceeding." (August 8 Order, ¶ 8). In so doing, the Commission, perhaps inadvertently, overlooked the possibility that the qualifications question as to Mr. Kealey might never be resolved if the Company proceeds successfully under Second Thursday. Meanwhile, Mr. Kealey, who stands ready to proffer his qualifications upon notification of a suitable procedure, remains on a public register of "potential wrongdoers" which, after having been whittled down from 91 to 43 to 4 without any specific fact-based finding, has effectively become a list of "wrongdoers." The August 8 Order thus erroneously deprived Mr. Kealey of any meaningful opportunity to be heard, a deficiency that could easily be cured without significant fiscal or administrative burden by the Commission's grant of a waiver of paragraph 8 of the August 8 Order and its institution of an expedited qualifications hearing.

³ On June 27, 1997, the Bureau directed MobileMedia to provide certain information with respect to the 43 individuals named on the list so that the Bureau could expeditiously identify applications in which those persons held attributable interests.

D. Mr Kealey Unsuccessfully Seeks to Be Heard.

On September 4, 1997, Mr. Kealey filed a Petition for Reconsideration and Modification or Clarification of the August 8 Order, requesting that the Commission either (1) modify the August 8 Order by removing Mr. Kealey from the list of individuals whose qualifications to hold an FCC license are in question, or (2) clarify the August 8 Order by defining a procedure by which Mr. Kealey may proffer information relevant to his qualifications, for example, by granting a limited waiver of paragraph 8 and an expedited qualifications hearing pursuant to 47 C.F.R. §§ 1.3 and 1.41. MobileMedia also filed a Request for Clarification of the August 8 Order, seeking to ensure “as a matter of simple fairness and due process” that certain key senior employees released from the list would not have to “face a cloud on their continued employment or scrutiny in connection with the company’s *Second Thursday* showing.”⁴ With no timely Commission ruling on either, Mr. Kealey and the Company separately wrote to the General Counsel’s office to solicit its assistance in urging the Commission to act on their respective pending applications. *The Commission has yet to rule on either.*

⁴ See MobileMedia Request for Clarification, Sept. 3, 1997, p. 5.

II. ARGUMENT

Mr. Kealey does not doubt that “MobileMedia has made tremendous strides toward the finalization of a plan of reorganization,” nor does he challenge the Company’s need for additional time “to permit the resolution of certain critical issues by the Bankruptcy Court.” (Request, pp. 5, 11). He simply disagrees with the Company’s position that a six-month extension “would harm no other party” and that “no purpose would be served by returning the Company to hearing.” (Request, p. 9). Mr. Kealey has suffered irreparably the past eight months, and further delay would only exacerbate the harm. Returning the Company to hearing would give Mr. Kealey a long-awaited opportunity to demonstrate his qualifications.

Mr. Kealey essentially has been disqualified from employment in the telecommunications industry. Upon the same factual record the Commission itself had earlier deemed “unclear” and not “entirely forthcoming,”⁵ and without any additional fact-finding, the FCC, by its August 8 Order, has published stigmatizing statements about Mr. Kealey based on allegations that are no more certain than those made against other individuals, including current officers of MobileMedia, who were removed from the “potential wrongdoer” list. Mr. Kealey has repeatedly asserted that those statements are untrue. The statements made about him allege serious character defects. They have damaged his professional reputation in such a manner as to virtually eliminate his future employment prospects in the telecommunications industry.

To clear his name, the August 8 Order provides Mr. Kealey with only two theoretical opportunities: participate in the Company’s qualifications hearing should the stay be lifted or Second

⁵ Indeed, by the August 8 Order, the Commission retreated from its earlier position that the factual record reflected uncertainty as to which “officers, directors, and senior managers knew about or condoned the wide-scale pattern of misbehavior.” See HDO, ¶ 10.

Thursday relief be denied, or resolve his qualifications in the context of a license application in which he has an attributable interest. The Commission has known since at least July 1997 that Mr. Kealey is not an FCC licensee or applicant, nor holds an attributable interest in such. Further, Mr. Kealey is unlikely to ever have such an interest in any telecommunications company, considering -- to use the *Company's* own words -- the "cloud"⁶ of the August 8 Order. Thus, Mr. Kealey is left with one option which, after eight long months, finally becomes exercisable next Monday -- participation in a hearing regarding the Company's license qualifications. By its Request, the Company now asks that that avenue be foreclosed to Mr. Kealey for another six months. Given the delays Mr. Kealey has been forced to suffer despite repeated efforts to obtain the Commission's attention, Mr. Kealey has no choice but to oppose that Request.

The FCC's inequitable public classification of Mr. Kealey on par with two admitted wrongdoers without any meaningful opportunity to challenge it constitutes significant injury to his constitutionally protected liberty interest in following his chosen profession. The Company itself agrees that the Commission should "establish a process by which Mr. Kealey can have an opportunity to remove himself from the list," but only "so long as that process does not affect the stay of this proceeding or MobileMedia's *Second Thursday* applications."⁷ It implies, then, that Mr. Kealey's interest is entitled to protection, but only to the extent that that protection does not interfere with its own interests. The Constitution makes no such exception.

⁶ MobileMedia Request for Clarification, p. 5.

⁷ Comment of MobileMedia Corporation on Petition of John M. Kealey, p. 1.

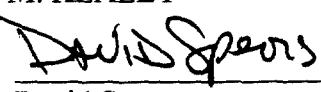
III. CONCLUSION

While a six month extension of the Stay Order is in the interests of the Company and its creditors, it would not serve Mr. Kealey's best interests. Accordingly, and because he has no other means of relief, he opposes the Company's Request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April 1998, a true and correct copy of the foregoing Comments of John M. Kealey on the Request of MobileMedia Corporation for Extension of Stay was served via U.S. Mail, postage prepaid on the following persons:

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